IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-387

R. Trippett Boineau,

Petitioner,

vs.

Tarr Investments, a partnership; Sherbrook Associates, a Partnership; and Leroy Strasburger, individually and as a partner of Tarr Investments and Sherbrook Associates; and Alvin Strasburger, individually and as a partner of Tarr Investments and Sherbrook Associates,

Respondents

and

R. Trippett Boineau,

Petitioner,

vs.

United States Trust Company of New York,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF SOUTH CAROLINA

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Columbia, S. C. 29211
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF SOUTH CAROLINA

Petitioner R. Trippett Boineau respectfully prays that a Writ of Certiorari be issued to review the per curian decision of the Supreme Court of South Carolina entered in this proceeding on May 29, 1979, and the Order of said Court entered June 11, 1979 denying petitioner's Petition for Rehearing.

OPINIONS BELOW

The per curiam Opinion of the Supreme Court of South Carolina herein concerned, Memorandum Opinion No. 79-96, filed May 29, 1979, is not reported but is set forth in the Appendix hereto at page 12. The Order denying petitioner's Petition for Rehearing, filed June 11, 1979, is not reported but is set forth in the Appendix hereto at page 13. The Order of the trial court is not reported but is set forth in the Appendix at page 14.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257 (3). The judgement of the Supreme Court of South Carolina, dated and entered May 29, 1979, Rehearing Denied June 11, 1979, violates the rights of petitioner to the due process of law and the equal protection of the laws granted him by the Fifth Amendment and the Fourteenth Amendment to the Constitution of the United States.

QUESTION PRESENTED

When petitioner's previous attorney, for reasons personal to him and without fault on the part of petitioner, withdrew at the commencement of the trial, did the the trial court's refusal to grant petitioner's motions for a continuance, for a voluntary non-suit and even for a temporary recess, to permit him to engage other counsel, thereby forcing petitioner to proceed to trial without the aid of cousel, constitute a denial of the due process of law and/or the equal protection of the laws guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States?

CONSTITUTIONAL PROVISIONS

Constitution of the United States:

Amendment V:

"No person shall be . . . deprived of life, liberty, or property, without due process of law . . ."

Amendment XIV, Section I:

". . . (N)or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner, who at one time had been the partner holding the largest partnership interest in the partnership known as (respondent) Tarr Investments, brought action (Calendar No. 1263) against the partnership and the other two original partners to have the Court declare a constructive trust in his favor in the substantial and valuable tracts of land owned by the partnership. (A separate action, Calendar No. 1315, was brought shortly thereafter against the same respondents and, later, still a third action, Calendar No. 1424, was brought against respondent United States Trust Company of New York, to whom a portion of the real estate involved had been sold by the original respondents. All three cases involved substantially the same substantive issues and were ultimately consolidated for trial).

After various preliminary proceedings, none of which involved the ultimate merits of petitioner's case, the case came on for trial before the Court of Common Pleas of the Fifth Judicial Circuit (Richland County) of South Carolina. When

the case was called, petitioner's then attorney offered a written motion, signed by petitioner pro se but not by his attorney, that the trial judge (a County Court judge sitting as Circuit Judge by special assignment) disqualify him self on the ground of bias and prejudice. The trial judge ruled that the motion would have to be signed by petitioner's attorney or it would not be considered. Petitioner's attorney thereupon withdrew as counsel.

Petitioner then moved that the case be continued because of his lack of counsel to represent him during the trial. The trial judge refused the motion (Transcript of the record before the Supreme Court of South Carolina 250; Appendix).

Petitioner then tendered to the Court the motion to disqualify himself previously offered by Mr. Brooks. The trial judge refused to consider the motion (Tr. 251; Appendix).

Respondent's counsel moved to consolidate all three cases for trial. Petitioner objected. The trial judge granted the motion (Tr. 261).

Petitioner renewed his request for a continuance until he could secure new counsel to represent him. The trial judge refused the motion (Tr. 251; Appendix).

Petitioner again asked the court for a recess or continuance until he could get new counsel. The trial judge denied the motion (Tr. 262; Appendix).

Petitioner then moved for a voluntary nonsuit without prejudice in all three cases. The trial judge denied the motion (Appendix).

Petitioner renewed his motions for a nonsuit or for a continuance for a sufficient period of time to permit to engage a new attorney. The trial judge denied both motions (Tr. 264; Appendix).

The trial then proceeded, lasting from 2:30 p.m. until 7:52 p.m. (two hours after the Court's announced recess time of 6:00 p.m. and three hours after the Court's usual recess time), with no break for supper (Tr. 331, 352, 355, 403).

The trial began again at 9:00 a.m. the next day (an hour ahead of the Court's usual starting time). Petitioner's present counsel appeared and stated that he would be willing to represent petitioner provided the case were continued long enough to permit him to familiarize himself with it. The trial judge refused to continue the case (Tr. 409-412).

Petitioner was unable to proceed, and rested his case (Tr. 413).

Some time later, the trial judge signed and filed an order finding in respondents' favor on all questions in all three cases, ordering the lis pendens filed by petitioner stricken, and the bond money (deposited in escrow pursuant to a Circuit Judge's previous order) released.

Petitioner thereafter in due time appealed to the Supreme Court of South Carolina. That Court, however, in a brief, 3-sentence per curiam decision, found no abuse of discretion or error of law, and dismissed petitioner's appeal.

THE FEDERAL CONSTITUTIONAL QUESTIONS WERE RAISED AND PRESERVED BEFORE THE TRIAL COURT

Since the Federal constitutional questions herein concerned involve the conduct of the trial itself, they were not involved in the pleadings in the case. They were raised by petitioner, however, at the start of the trial (Transcript of record before the Supreme Court of South Carolina, 249-264; Appendix hereto 21) and specifically raised by petitioner's present counsel as soon as he came into the case during the course of the trial. (Transcript of record before Supreme Court

of South Carolina; 409-413; Appendix 25).

Exceptions to the trial judge's ruling on petitioner's above motions were duly taken on petitioner's appeal to the Supreme Court of South Carolina (Transcript 424-428; Appendix 28).

The constitutional questions were again raised by petitioner in his petition to the Supreme Court of South Carolina for a rehearing (Appendix 31).

REASONS FOR GRANTING THE WRIT

The Courts of this country, particularly this Honorable Court, have in recent years made tremendous strides in establishing procedural rules to protect the interests of defendants in criminal cases - even habitual criminals charged with (and quite probably guilty of) serious crimes involving violence and even depravity. See for example Powell vs. Alabama, 287 US 45, 77 L Ed 158, 53 S Ct 55, 84 ALR 527 (1932); Miranda vs. Arizona, 394 NS 436, 86 S Ct 1602, 16 L Ed 2d 694, 10 ALR 3d 974 (1966).

These rights are gradually being extended downward to lesser crimes and types of proceedings, such as cases involving minors, habeas corpus proceedings, commitment of incompetents, and even quasi-judicial administrative proceedings. Chandler vs. Fretag, 348 US 3, 99 L Ed 4, 75 S Ct 1 (1954); "Trumpets in the Corridors of Bureaucracy: A Coming Right to Appointed Counsel in Administrative Proceedings", by Roy M. Brisbois, UCLA L Rev. 18, 758 Mr. 1971.

Civil cases, however, which frequently involve considerations of even greater importance to the parties involved, such as petitioner's claim here, have received relatively little attention, and relatively little progress has been made in spelling out the procedural rights of litigants in civil cases.

The present case affords this Court an opportunity to up-date some of the principles involved in the question of what constitutes "due process of law" and "the equal protection of the laws" in the trial of civil cases.

The statutes, rules of court and the court decisions construing these statutes and rules of court in South Carolina provide little help in understanding what these terms mean as far as practical application is concerned.

The most positive statement on the grounds for the grant or refusal of a motion for a continuance is found in Rule 27 of the Rules of Practice of the Circuit Courts of South Carolina. See Appendix

This rule, however, is unfortunately limited by its own terms to motions for a continuance based on the absence of a witness. In other situations a trial court must depend upon the general rule that such motions rest in the "sound discretion" of the trial court. See Annotation to Rule 27 (Code of Laws of South Carolina of 1976, Volume 22, page 122, et seq.). The decisions, however, frequently reach opposite results in very similar situations. See Brunson vs. Hamilton Ridge Lumber Co., 122 SC 436, 115 SE 624 (1932) (following the general rule); Graham vs. Greenville City Coach Lines, 233 SC 175, 104 SE 2d 72 (1958) (reversing the trial judge's refusal to grant a continuance).

Even the most recent decision by this Honorable Court cited by respondents in their brief before the Supreme Court of South Carolina, Ungar vs. Sarafite, 376 US 575, 11 L Ed 2d 921, 84 S Ct 841 (1964), speaks in the same language of "sound discretion", saying, at 376 US 575, 589, 11 L Ed 2d 921, 84 S Ct 841, 849-850 (1964):

> "The matter of a continuance is traditionally within the discretion of

> the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel . . . There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied."

In the present case the Supreme Court of South Carolina took the easy way out, sprinkled the holy water of the term "judicial discretion" over the rulings of the trial court challenged on petitioner's appeal, found no abuse of discretion or error of law, and summarily dismissed petitioner's appeal. The per curiam decision did nothing to clarify or amplify the South Carolina law which trial courts must apply in ruling on motions for continuances in the future.

The applicable South Carolina law governing the grant or refusal of motions for a voluntary non-suit are almost equally vague.

Rule 18 of the Rules of Practice of the Circuit Courts of South Carolina (Code of Laws of South Carolina of 1978, Volume 22, page 115) provides as follows:

> ". . .A motion for a nonsuit must be reduced to writing by the moving counsel, or by the Stenographer, under the direction of the Court, stating the grounds of the motion."

This rule, however, applies only to involuntary non-suits and, even there, only requires a written statement of the grounds for such a motion.

Rule 45 of the Rules of Practice of the Circuit Courts of South Carolina (Code of Laws of South Carolina of 1976, Volume 22, Page 182 of 1978 Supplement) sets out the rule as to the grant of a voluntary non-suit or dismissal. This rule is printed in full at page of the Appendix hereto.

Here again the decisions of the South Carolina Supreme Court all come back to the same vague standard "sound discretion of the trial court." Cunningham vs. Independent Insurance Co., 182 SC 520, 189 SE 800 (1937); Parnell vs. Powell, 191 SC 159, 3 SE 2d 801 (1939); Romenus vs. Biggs, 217 SC 77, 59 SE 2d 645 (1950).

Petitioner also moved for a temporary recess to permit his replacement counsel to familiarize himself with the case and then, when this was denied, also moved even for a temporary recess to give him time to procure the witnesses he needed to present his case (These motions were also denied).

Under the rules and principles followed by South Carolina courts motions for a temporary recess are also addressed to the sound discretion of the trial court and are governed by the same rules that govern continuances - through a lesser showing of cause may be sufficient, since the delay requested is less.

This practice brings us back again to the same old vague standard - "sound discretion of the trial court" - whatever that means.

Unfortunately the rule apparently followed by most of the other states of the United States as to the grant or refusal of motions for continuances, voluntary non-suits and temporary recesses are similar to the rules followed in South Carolina. 53 Am Jur 42, Trial §24; 53 Am Jur 43, Trial §25; 24 Am Jur 2d 7, Dismissal, etc. §6; 75 Am Jur 2d, 164, Trial §51; 75 Am Jur 2, 165, Trial §52; 27 CJS 325, Dismissal, etc. §65; 88 CJS 90, Trial §35.

88 CJS 304, Trial §157; Annotation 48 ALR 2d 1150, annotating the decision in Finch vs. Wallberg Dredging Co., 76 Idaho 246, 281 P 2d 136 (1955).

The right of a party to be represented by counsel in civil actions has been recognized in recent decisions of this Court. Armstrong vs. Manzo, 380 US 545, 14 L Ed 2d 62, 85 S Ct 1187 (1965), reversing a decision by the Texas Court of Civil Appeals in a child custody case and holding that:

> "A fundamental requirement of due process is 'the opportunity to be heard' . . . an opportunity which must be granted at a meaningful time and in a meaningful manner." (Emphasis added).

This language was quoted with approval in Fuentes vs. Shavin and Pârham vs. Cortese, 407 US 67, 32 L Ed 2d 556, 92 S Ct 1893 (1972), holding that the claim and delivery statutes of Florida and Pennsylvania allowing pre-judgement seizure of the property involved were constitutionally invalid and defective in depriving the defendant of due process of law.

Petitioner respectfully submits that this Court should go on from this decision, grant certicorari in this case, and spell out in more detail than can be found now the principles governing the right to counsel in civil cases and the rights of litigants in civil cases to the grant of motions for a continuance, or a voluntary non-suit, or a temporary recess, where a party, without fault on his own part, finds himself in the position of being forced to go to trial without the aid of trial counsel. The present law, reducing the terms "due process of law" and "the equal protection of the laws" to little more than the term "sound discretion of the trial court," leaves the litigants (and the

trial court) in civil cases adrift upon an endless sea, without chart or compass to guide them. To leave the rights of litigants in civil cases to the "sound discretion" of the trial court is really begging the question and does not provide an adequate answer. This case provided an opportunity for this Court to set out specifically the beacons and markers to guide civil litigants and trial courts in future cases and, incidentally, to rectify the injustice which the present outcome of this case, if allowed to stand, will constitute.

CONCLUSION

It is respectfully submitted that the question presented here for review is meritorious; that the question is of general importance in applying Federal constitutional law to the trial of civil action; that up to this point in this case petitioner has been denied the right guaranteed him by the Fifth and Fourteenth Amendments to be represented by counsel and to present his case at a meaningful time and in a meaningful way with the aid of counsel; and that consequently this Court should grant certiorari in this case; review the record (to the extent it even exists at this point), and reverse the decisions of the trial court and of the South Carolina Supreme Court, and remand the case for a full trial of petitioner's case on its merits.

Respectfully submitted,

Irvine F. Belser, Jr.
1310 Lady Street,
Suite 809
P. O. Box 12014
Columbia, SC 29211
(803) 799-9472
Attorney for petitioner

Columbia, SC

August 27 , 1979.

APPENDIX

THE STATE OF SOUTH CAROLINA
In The Supreme Court

R. Trippett Boineau, ... Appellant,

v.

Tarr Investments; Sherbrook Associates; and Leroy Strasburger, individually and as a partner of Tarr Investments and Sherbrook Associates; and Alvin Strasburger, individually and as a partner of Tarr Investments and Sherbrook Associates, ... Respondents

and

R. Trippett Boineau, ... Appellant,

v.

United States Trust Company of New York, . . . Respondent.

Appeal From Richland County
Owens T. Cobb, Jr., County Judge

Memorandum Opinion No. 79-96
Filed May 29, 1979

APPEAL DISMISSED

Irvine F. Belser, Jr., of Columbia, for appellant.

Thomas E. McCutchen and Stewart P. Hayes, both of Whaley, McCutchen & Blanton, for respondents Tarr Investments, et al.; and Hamilton Osborne, Jr., of Boyd, Knowlton, Tate & Finlay, for respondent U. S. Trust Co. of New York, all of Columbia.

PER CURIAM: The appeal before us involves questions of discretion on the part of the trial judge. After hearing argument of counsel and reviewing the entire record, we are of the unanimous opinion that there was no abuse of discretion; no matter of precedent is involved, and no error of law appears. The appeal is therefore dismissed under our Rule 23.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ Wm. L. Rhodes, Jr. A.J.

s/ George T. Gregory, Jr. A.J.

The Supreme Court of South Carolina

FRANCES H. SMITH
CLERK

P. O. BOX 11330
COLUMBIA, S.C. 29211

June 11, 1979

Irvine F. Belser, Jr., Esquire
P. O. Box 12014
Columbia, South Carolina 29211

Re: R. Trippett Boineau v. Tarr Investments, et al.

Dear Mr. Belser:

The Court has this day refused your petition for rehearing in the above case in the following order:

"Petition denied.

s/ J. Woodrow Lewis C.J.

s/ Bruce Littlejohn A.J.

s/ J. B. Ness A.J.

s/ Wm. L. Rhodes, Jr. A.J.

s/ George T. Gregory, Jr. A.J."

The remittitur is being sent down today.

Very truly yours,

CLERK

FHS/rl

cc: Thomas E. McCutchen, Esquire
Hamilton Osborne, Jr., Esquire

ORDER OF THE COURT OF COMMON PLEAS FOR
RICHLAND COUNTY, SOUTH CAROLINA

ORDER

The above three (3) cases came on to be heard by me at a scheduled term of the Court of Common Pleas on February 21, 1978. All three (3) cases appeared on the trial roster. At the call of the three (3) cases a written motion was presented for me to disqualify myself. The motion and attached affidavit were signed by Mr. Boineau pro se. Mr. Walter Brooks, attorney, also appeared for the plaintiff. I asked Mr. Brooks if that was his position and Mr. Brooks then moved to withdraw as counsel for R. Trippett Boineau, which motion was granted. I refused to disqualify myself as Trial Judge. Mr. Brooks remained at the trial table and conferred with Mr. Boineau frequently during the trial, Mr. Boineau then moved to continue the cases. I observed that Mr. Boineau had represented himself in Calendar No. 77-CP-40-1315 from the inception and that Calendar No. 77-CP-40-1263 is identical except for signatures. Mr. Boineau also represented himself in Calendar No. 77-CP-40-1424. I noted that the cases had been previously set for trial but continued because Judge Nicholson had disqualified himself. I noted that the order of Judge Grimball had set all three (3) cases for February 21, 1978. I also noted that said order had been served upon Mr. Brooks as attorney and also upon Mr. Boineau, pro se. I refused the motion to continue the cases.

Counsel for the defendant United States Trust Company moved to try the three (3) cases together; counsel for the remaining defendants consented; Mr. Boineau objected. The issues raised in the proceeding against United States Trust Company are a part of the controversy asserted in the other suits, which pleadings are identical. The proceedings are equitable and should be tried together to conserve time and

expense. Barrett vs. Broad River Power Co., 146 S.C. 85, 143 S.E. 650; DeTriville vs. Groover, 219 S.C. 335, 65 S.E. 2d 232; Farmers' and Merchants' National Bank vs. Foster, 132 S.C. 410, 129 S.E. 629. The motion to consolidate the three (3) cases for trial was granted.

A question relating to a motion addressed to an order of Judge Grimball was then raised. The record reveals that the appeals from the orders of Judge Grimball had been dismissed. I determined that no such motion was before me or should stay the trial of the three (3) cases.

Counsel for United States Trust Company then raised a question of contempt on the part of the plaintiff. I stated that no such proceeding was before the court on a rule to show cause. My ruling thereupon is without prejudice to the rights, if any, of the United States Trust Company with regard to said subject matter.

Mr. Boineau then moved for a voluntary non-suit without prejudice. The defendants objected to same. In view of the events which have heretofore occurred in these suits, as revealed by the record, the order setting these cases for trial (special order), the presence of the parties, the presence of witnesses, the counterclaim and affirmative relief asserted by the defendants, the objection of the defendants, I refused the motion for a voluntary non-suit without prejudice.

The plaintiff then offered the transcript of July 29, 1977 in lieu of testimony. The defendants did not object provided all cross-examination was included. Said transcript was accepted as plaintiff's case. The plaintiff then rested. The defendants moved for a non-suit. I took the same under advisement and the defendants then presented evidence consisting of witnesses, documents, records and prior court proceedings. The defendants completed their presentation on February 21, 1978. On February 22, 1978 Mr. Irvine F. Belser, Jr., an attorney, appeared and stated he was willing to represent Mr. Boineau if the cases could be continued and he made a motion to continue the cases. I refused the motion. Mr. Belser then withdrew.

Mr. Boineau requested time to subpoena witnesses. This request was denied. I asked Mr. Boineau if he had any additional evidence to present and he had none.

I have carefully considered the pleadings, the files, the testimony, the transcript of July 19, 1977 and the exhibits.

I find that Tarr Investments, a partnership, was formed on or about April 13, 1966, amended October 14, 1966. The general partners were R. Trippett Boineau, the plaintiff, and Leroy Strasburger and Alvin Strasburger, two of the defendants. I find that Mr. Boineau became delinquent in capital contributions to the partnership, that the two individual defendants advanced moneys for the plaintiff and/or loaned moneys to the plaintiff and took an assignment of the partnership interest of the plaintiff as security for said loans. I find that the plaintiff failed to repay the notes (moneys advanced) due to the individual defendants and suits were instituted against Mr. Boineau to collect the amounts due.

I find that the suits were dismissed in return for the cancellation of the indebtedness of the plaintiff to the individual defendants and the conveyance of the plaintiff's entire interest in Tarr Investments, subject to a repurchase option, the same being evidenced by the written agreement dated November 8, 1971.

I find that the plaintiff executed a conveyance of his entire partnership interest in Tarr Investments to the individual defendants, the same being recorded in the Office of the Clerk of Court for Richland County in Deed Book D-225 at Page 66. The repurchase option expired on March 30, 1972, but it was extended to June 1972. I find that the repurchase option expired in June 1972 and I further find that no repurchase option existed or was intended after June 1972.

I find that the plaintiff failed to exercise his repurchase option by June 1972 or within any period to which his repurchase option was extended.

I find that Leroy Strasburger and Alvin Strasburger are the sole partners of Tarr Investments

and have been the sole partners since November 11, 1971. I find that Leroy Strasburger and Alvin Strasburger are the sole partners in Sherbrook Associates, I find that the plaintiff R. Trippett Boineau has no legal or equitable interest in Tarr Investments or Sherbrook Associates.

I find that R. Trippett Boineau has no legal or equitable interest in the properties, assets or funds of Tarr Investments, Sherbrook Associates or the properties purchased by the United States Trust Company from Tarr Investments and Sherbrook Associates or the funds expended by United States Trust Company to Tarr Investments and/or Sherbrook Associates. I find that plaintiff has failed to produce any evidence that United States Trust Company of New York took the property which it purchased from Tarr Investments and Sherbrook Associates with notice of any claim, right or interest of the plaintiff in said property.

I find that United States Trust Company of New York as Trustee holds all properties described in the deed dated July 22, 1977, which is recorded in the office of the Register of Mesne Conveyances of Richland County in Deed Book d-430 at Page 381 free and clear of any claim, ownership, right, option or interest of R. Trippett Boineau.

I find that Leroy Strasburger and Alvin Strasburger made large payments (for indebtedness and otherwise) on behalf of Tarr Investments and Sherbrook Associates from November 11, 1971 and that the plaintiff has not tendered or repaid the same.

I find that the plaintiff failed to institute any action against the defendants for the alleged recovery of and/or transfer of said property. I further find that the plaintiff's claim is barred by laches.

I find that the plaintiff. R. Trippett Boineau, did not transfer his interest in Tarr Investments to Leroy Strasburger and Alvin Strasburger under any understanding or agreement, oral or written, except the repurchase option of November 11, 1971. I find that the transfer of the interest of the plaintiff in Tarr Investments to Leroy Strasburger

was not made in anticipation of obtaining a loan from the Federal Land Bank.

I find that there was no agreement between the plaintiff and the individual defendants to use any part of the Federal Land Bank loan to pay the arrearage of the plaintiff in the capital contributions to Tarr Investments. I further find that there was no agreement between the plaintiff and the individual defendants to deliver to plaintiff any portion of the proceeds of the Federal Land Bank loan.

I find that the plaintiff assigned his interest in Tarr Investments to the individual defendants on March 29, 1971.

I find that there was no agreement between the plaintiff and the individual defendants to substitute any other option for that of November 11, 1979 (except to extend the time to June 1972). I find that the individual defendants did not agree with plaintiff that a contract to sell a five hundred fifty-nine (559) acre parcel or any other parcel would constitute a compliance with the repurchase option of plaintiff.

I find that Tarr Investments has continued to exist since November 11, 1971.

I find that no offer was made by Wyman Boozer and no contract with Wyman Boozer existed or was potentially available.

I find that the defendants Leroy Strasburger and Alvin Strasburger each own a fifty (50%) per cent interest in Tarr Investments.

I find that the individual defendants did not hold any interest in Tarr Investments and/or Sherbrook Associates or their assets for the benefit of or in trust for R. Trippett Boineau.

I conclude that the plaintiff is without merit, that the plaintiff has failed to carry the burden of proof required to establish a constructive trust, and that the plaintiff has not established any claim by the preponderance of the evidence.

I conclude that the defendants have prevailed and that the plaintiff is not entitled to any relief,

and the plaintiff's claims are hereby dismissed with prejudice.

The only evidence presented by plaintiff consisted of the transcript of the proceedings before the Honorable John Grimball on July 29, 1977 by virtue of which the court determined that the transfer recorded in Deed Book D-430 at Page 381 in the office of the Register of Mesne Conveyances for Richland County was free and clear of any claim of the plaintiff or any lis pendens filed by or for plaintiff. The order of the Honorable John Grimball of July 22, 1977 in Calendar No. 77-CP-40-0823 may indeed be res judicata of some questions here asserted by plaintiff. The proceedings by or on behalf of plaintiff with regard to filing the various lis pendens concern this court.

This order is without prejudice to the rights of the defendants, if any, to assert violations, if so, of prior orders of Judge Grimball.

IT IS ORDERED that R. Trippett Boineau be and he hereby is restrained from filing or procuring or authorizing or directing any further or additional filing of any lis pendens relating to this action or any other action against Tarr Investments and/or Sherbrook Associates and/or Leroy Strasburger and/or Alvin Strasburger and/or United States Trust Company of New York or their respective successors or assigns and describing all or any portion of the real property itemized, set forth and described in the Exhibit marked "A" attached hereto and herewith incorporated by reference for the purpose of identifying the real properties in question (omitted in transcript), or employing any person to file such a lis pendens.

IT IS FURTHER ORDERED that the Fifty Thousand ($50,000.00) Dollars hereto deposited in excrow with a building and loan association or bank pursuant to the order of Honorable John Grimball dated August 8, 1977 and all accrued interest thereon be immediately released and delivered to Leroy Strasburger and Alvin Strasburger and any escrow agent or trustee is herewith ordered and directed to deliver said Fifty

Thousand ($50,000.00) Dollars plus accrued interest immediately to Leroy Strasburger and Alvin Strasburger.

The Clerk of the Richland County Court (and/or the Register of Mesne Conveyances as it may apply, if so) is hereby directed to strike and cancel all lis pendens heretofore filed by or on behalf of R. Trippett Boineau in cases bearing No. 77-CP-40-0823, No. 77-CP-40-1315 and No. 77-CP-40-1424.

Nothing herein contained shall prohibit the defendants and/or the United States Trust Company to apply to the court for such ancillary or supplemental relief as may be appropriate or justified by virtue of the various proceedings brought by or on behalf of the plaintiff or by virtue of the relief set forth herein.

The defendants have established a complete defense to all causes asseted by the Plaintiff and judgement is herewith in favor of the defendanys in all cases.

All costs are herewith assessed against the plaintiff.

ALL OF WHICH IS SO ORDERED.

/S/ Owens T. Cobb, Jr.
Special Presiding Judge
of the Court of Common
Pleas for Richland
County

Columbia, South Carolina

March 3, 1978.

EXCERPTS FROM TRANSCRIPT OF RECORD AND PETITION FOR REHEARING RELATIVE TO PRESERVATION OF CONSTITUTIONAL QUESTION

(a) Motions by petitioner for continuance and/or voluntary non-suit (Transcript 249-250, 252, 261-264)

. . . . . .

TRANSCRIPT 249-250

THE COURT: All right, sir. Now, Mr. Boineau, are you ready to go forward with the matters?

MR. BOINEAU: Your Honor, you know as much about this situation as I do. I frankly am somewhat shocked. I don't see how I can go forward.

THE COURT: Well, Mr. McCutchen has told me the urgency of the matter.

MR. BOINEAU: I heard.

THE COURT: I think I am going to have to go forward with it, unless you can give me some reasons why I should not.

MR. BOINEAU: It is a fairly large case, as Mr. McCutchen said, with substantial money and at this time I'm without counsel totally by surprise.

THE COURT: You see, I do not know the reason you and your counsel have done what you have done. It may be a purely private matter between you, it may be something unavoidable, these are things that I do not know, but in the interest of proceeding with the matter to a conclusion, with the important aspects that it has, I'm going to have to go ahead.

All right, now, a motion was handed up to me a minute ago which I handed back to disqualify myself. Do you want to make that motion at this time?

MR. BOINEAU: Now, I have got to go ahead? There is no way out? Because, you know, it really is a rather large proposition and rather strange terms just occurred here. If you could give me until the morning to get counsel or just anything--

THE COURT: I will put down that you made a motion to continue the matter and I deny it.

TRANSCRIPT 252

THE COURT: . . .All right. Are there any other motions, Mr. Boineau?

MR. BOINEAU: Just one second.

Your honor, I am apparently being forced to move forward, much against my will. I'm totally unprepared and totally suprised.

TRANSCRIPT 261-264

THE COURT: . . . Mr. Boineau, you are the plaintiff. You may proceed with the evidence.

MR. BOINEAU: Your Honor, I move for a continuance. During the recess I contacted an attorney who said that he would be able to help us in the morning.

THE COURT: Well, I have already ruled and denied that so there is no need to keep going over that.

MR. BOINEAU: Your Honor, I think you saw what happened here. It is a terrible surprise and there is an awful lot at stake. During the recess I got ahold of an attorney who said he can be here in the morning. He has something this afternoon and couldn't come up.

THE COURT: I will put that in the record as additional information. The motion is denied.

I set it at the roster meeting today, I have other cases already set, I cannot change it.

For the record, we started at 10:00 o'clock and we have got ten cases and I'm not going to strike those ten cases to allow you to get an attorney.

It is your case, Mr. Boineau, and you may proceed and present evidence.

MR. BOINEAU: Your Honor--

THE COURT: Yes, sir?

MR. BOINEAU: I would move for voluntary non-suit without prejudice. At this time I'm totally unprepared. I have no counsel.

THE COURT: All right. What do you say, Mr. McCutchen?

MR. MCCUTCHEN: Your Honor, we oppose it. As I said, in this case, this particular instance--

THE COURT: You object? That is all I want to know.

MR. MCCUTCHEN: Yes. I object.

THE COURT: Do you object?

MR. OSBORNE: Mr. Boineau signed the pleadings--

THE COURT: I just want to know--

MR. MCCUTCHEN: We object and we want to go forward and have an affirmative ruling.

THE COURT: All right. Motion denied.

MR. BOINEAU: Your Honor, it is my understanding of the law that the plaintiff can move at any time for voluntary non-suit without prejudice.

THE COURT: No, sir.

MR. BOINEAU: May I just ask the court a question then?

THE COURT: All right, sir.

MR. BOINEAU: As I understand it, I must take the stand and cross examine myself, in effect--examine myself. That is the dilemma that I find myself.

THE COURT: In effect you take the stand and just sort of ask yourself questions or just make your narrative statement as to your case. You don't have to cross examine yourself, as I see it, just get a narrative statement or why you think you are entitled to the release that you had asked for in these lawsuits. Then counsel will have the opportunity to cross examine you.

MR. BOINEAU: Thank you, sir.

THE COURT: Is that what you want to do?

MR. BOINEAU: I think your Honor gave me no other choice. I say I am unprepared--

THE COURT: I give you the choice of presenting the evidence or not.

MR. BOINEAU: I mean, the nonsuit is not allowed?

THE COURT: Right, non-suit is not allowed.

MR. BOINEAU: I can't get another attorney?

THE COURT: That's right.

MR. BOINEAU: And I am totally unprepared.

THE COURT: All right. If you have got any evidence let's go forward with it.

(b) Renewed motion by petitioner for continuance and/or temporary recess (Transcript 409-413)

MR. BELSER: May it please the court, before we proceed any further, I am Irvine F. Belser, Jr., a member of the Bar. Mr. Trippett Boineau, who I have known personally for a number of years and have had a number of business dealings with, all of them satisfactory, called me. He said that for certain reasons that his present counsel had been forced to disqualify himself and withdraw as counsel, which left Mr. Boineau without counsel and would I consider taking over representation of the case.

I told him I had other matters to look into the rest of the afternoon and I would talk to him further last night. He called me last night and it was like 10:00 o'clock.

We discussed it very briefly and I told him I would be willing to go into it, so long as I had time to familarize myself with the pleadings and issue presently before the court, and I would come with him this morning to tell the court that I was willing to represent him provided I had time in which to prepare myself.

Between 10:00 o'clock and this morning, I obviously have not had time to even look at the record. I am not even familiar with the caption

of the case or a chance to familiarize myself with what is before the court at this moment, or to subpoena witnesses for whatever further testimony he may need to introduce to protect his interest in the case.

Now, it is my understanding that this is a non-jury matter presently before the court, basically, on its merit, and not on a motion for a summary judgment or demurrer or anything of that sort, and there is no jury present.

The only other persons in court are local parties, who are present, or other attorneys who are present. This court is holding a two day non-jury term of court with numerous other matters scheduled. It would be very easy for this court to postpone this matter for not less than a week, I would think 30 days would be more appropriate, to permit me to familiarize myself with the case and Mr. Boineau to otherwise prepare himself to go forward.

I think a failure under these circumstances to grant this request is a denial of due process. Mr. Boineau happens to be an attorney, but he is also a private citizen. He has a right to be represented by counsel.

There is an old saying that any lawyer who represents himself has a fool for a client. There is a lot of truth to that. A lawyer cannot display the independent judgment in order to represent himself effectively. If he testifies as a witness, he disqualifies himself as an attorney.

So, Mr. Boineau is hopelessly boxed in and will be unable to protect his own interest in this case.

Now, the courts do not exist for the benefit of the court or clerk, but for the benefit of the

litigants and lawyers who practice in that court. Now, Mr. Boineau is not a defendant in this case, he is a plaintiff, and he is invoking the aid of this court in order to permit him to present--

THE COURT: Excuse me. I hate to interrupt you, but you told me that you are willing to appear but you have not told me you are his lawyer and now you are pleading his case. So, I have to know whether you are appearing now as his counsel or what.

MR. BELSER: I am appearing as his counsel for the purpose of asking for a continuance to permit me to familiarize myself with the case. If Your Honor refuses that, I will walk out the door, because I can't represent a client without having ever read the pleadings or talking to the client.

I am respectfully asking you to grant Mr. Boineau and my, his attorney, a reasonable continuance within which I can familiarize myself with the case. I think due process requires no less.

THE COURT: All right, sir. Well, I have considered your motion. I reached the opinion that it was necessary to proceed with the case yesterday and we are at the reply stage of taking testimony. I cannot continue your case, so your motion is denied.

. . . . .

MR. BOINEAU: Since 8:00 o'clock last night when we finished, I attempted to obtain the several witnesses, but was unable since some of them are hostile. I have been trying to get them since 8:00 o'clock last night and I respectfully request to be be granted sufficient time to do

so and get a subpoena out, because it is very important.

THE COURT: Well, the request is denied. We are at the reply stage of taking testimony. Do you have any testimony, any further evidence?

MR. BOINEAU: I was unable to get the witness.

THE COURT: So, plaintiff rests? You have no further testimony?

All right. Gentlemen, that concludes the taking of evidence in this case. . . .

(c) Exceptions before South Carolina Supreme Court (Transcript 424-428)

. . . . .

2. The trial judge erred in refusing appellant's motion made February 21, 1978 for a continuance of the trial of the case, the error being that appellant's previous counsel had unexpectedly and without prior warning withdrawn as counsel for appellant and appellant was without counsel to represent him; appellant was entitled to counsel and could not adequately represent himself; and the trial judge's refusal of appellant's motion for a continuance, under the circumstances then existing, constituted a denial of due process of law and a denial of the equal protection of the laws to which appellant was entitled under Article I, Section 3, of the South Carolina Constitution and the Fifth Amendment and Section I of the Fourteenth Amendment of the United States Constitution.

. . . . .

4. The trial judge erred in refusing appellant's motion made February 21, 1978 to continue the trial of the case until the next morning so as to permit him to engage other counsel to represent him, the error being that appellant's pervious counsel and unexpectedly and without prior warning withdrawn as counsel for appellant and appellant was without counsel to represent him; appellant was entitled to counsel and could not adequately represent himself; and the trial judge's refusal of appellant's motion for a continuance, under the circumstances then existing, constituted a denial of due process of law and a denial of the equal protection of the laws to which appellant was entitled under Article I, Section 3, of the South Carolina Constitution and the Fifth Amendment and Section I of the Fourteenth Amendment of the United States Constitution.

. . . . .

6. The trial judge erred in refusing appellant's motion for a voluntary non-suit without prejudice, the error being that appellant's previous counsel had unexpectedly and without prior warning withdrawn as counsel for appellant and appellant was without counsel to represent him; appellant was entitled to counsel and could not adequately represent himself or present his own case; and the trial judge's refusal of appellant's motion for a continuance, under the circumstances then existing, constituted a denial of due process of law and a denial of the equal protection of the laws to which appellant was entitled under Article I, Section 3, of the South Carolina Constitution and the Fifth Amendment and Section I of the Fourteenth Amendment of the United States Constitution.

. . . . .

8. The trial judge erred in refusing appellant's motion made February 22, 1978 for a temporary continuance of the case to permit replacement counsel to familiarize himself with the case, the error being that appellant's previous counsel had unexpectedly and without prior warning withdrawn as counsel, appellant was then without counsel to represent him but had arranged with other counsel to represent him provided the replacement counsel be allowed sufficient time to familiarize himself with the case; and the trial judge's refusal of appellant's motion for a continuance, under the circumstances then existing, constituted a denial of due process of law and a denial of the equal protection of the laws to which appellant was entitled under Article I, Section 3, of the South Carolina Constitution and the Fifth Amendment and Section I of the Fourteenth Amendment of the United States Constitution.

9. The trial judge erred in insisting upon and pushing trial of the case at an accelerated and abnormal pace in, inter alia, a) denying appellant's motions for a continuance of the trial, for a voluntary non-suit without prejudice, and even a temporary continuance as aforesaid, b) granting respondents' motion that all three cases be consolidated for trial despite a difference of parties, c) not recessing the first day's trial proceedings until approximately 8:00 p.m., well after the court's usual recess time of 5:00 p.m. and two hours later than the 6:00 p.m. set by the court earlier in the day for recessing the day's proceedings, d) insisting that appellant continue cross examination of respondents' witnesses without pause to permit appellant to review the documents involved or otherwise prepare for such cross examination. e) commencing the second day's proceedings at 9:00 a.m. instead of the usual 9:30 or 10:00 a.m., f) repeatedly

refusing to allow appellant to read into the record, or to have the witness read into the record, for the purpose of the court's understanding of the point involved, even a single sentence of various documents about which the witness was being examined, g) insisting that appellant lend the court the appellant's one copy of the transcript of an earlier hearing (after neither the trial judge nor the Clerk of Court could find the original transcript) and then refusing to lend back to the appellant his own copy of the transcript, h) refusing appellant's request for a temporary delay to permit him to subpoena witnesses, and i) advising the parties that he did not desire any briefs, the error being that the trial judge's conduct of the trial deprived appellant of any opportunity to recover from the unexpected loss of his counsel and/or otherwise to prepare and present his own case, and constituted an abuse of discretion and a denial of due process of law and a denial of the equal protection of the laws to which appellant was entitled under Article I, Section 3, of the South Carolina Constitution and the Fifth Amendment and Section I of the Fourteenth Amendment of the United States Constitution.

d) Excerpts from petitoner's Petition for a Rehearing.

. . . . .

1. This Honorable Court overlooked or misapprehended the fact that conduct of the trial court denied plaintiff-appellant due process of law.

2. This Honorable Court overlooked or misapprehended the plaintiff-appellant's position, and the authorities supporting the same, that the trial court's refusal of appeallant's motion for a continuance, a voluntary non-suit

or even a temporary recess to permit him to secure new counsel constituted a denial of due process of law and the equal protection of the laws.

RULE 27

MOTIONS FOR CONTINUANCE

No motion for the postponement of trial beyond the term, either in the Common Pleas or General Sessions, shall be granted, on account of the absence of a witness, without the oath of the party, his counsel or agent, to the following effect, to wit: That the testimony of the witness is material to the support of the action, or defense of the party moving; that the motion is not intended for delay; but is made solely because he cannot go safely to trial without such testimony; that he has made use of due diligence to procure the testimony of the witness or of such other circumstances as will satisfy the Court that his motion is not intended for delay. In all such cases where a writ of subpoena has been issued, the original shall be produced, with proof of service, or the reason why not served, endorsed thereon, or attached thereto; or if lost, the same proof shall be offered, with additional proof of the loss of the original subpoena.

A party applying for such postponement on account of the absence of a witness shall set forth under oath in addition to the foregoing matter what fact or facts he believes the witness if present would testify to, and the grounds for such belief.

RULE 45

Notwithstanding the provisions of any other Rules to the contrary, no case listed in the File Book which thereafter is settled or disposed of in any manner, shall be dismissed, marked ended, or stricken from the File Book except as follows:

1. An action may be dismissed by the plaintiff without order of Court (a) by filing and serving a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgement, whichever first occurs, or (b) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.
2. Except as otherwise provided in this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclim can remain pending for independent adjudication by the Court. Unless otherwise specified in the Order, a dismissal under this paragraph is without prejudice.

3. Stricken pursuant to the provisions of Rule 82.
4. Counsel in the case shall have prepared and filed an order signed by the Clerk of Court pursuant to the provisions of Section 10-1502.1, Code of Laws of South Carolina, 1962 [§15-35-30, Code of Laws of South Carolina, 1976]."

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-387

R. Trippett Boineau,

Petitioner,

vs.

Tarr Investments, a partnership; Sherbrook Associates, a partnership; and Leroy Strasburger, individually and as a partner of Tarr Investments and Sherbrook Associates; and Alvin Strasburger, individually and as a partner of Tarr Investments and Sherbrook Associates,

Respondents

and

R. Trippett Boineau,

Petitioner,

vs.

United States Trust Company of New York,

Respondent.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF CASE

The Petition before the Court involves three cases. Two of the cases (Calendar Numbers 1263 and 1315) are between the same parties and the allegations of the complaints in each are identical. The only difference between the two cases is that in one action (1263) the Petitioner appeared through counsel and in the other (1315), he appeared pro se from the beginning (Tr. 1). The complaint in the third case (Calendar Number 1424) names only United States Trust Company of New York as a defendant and is signed by the Petitioner pro se (Tr. 4).

The only issues raised by the Petition before the Court are addressed to the denial by the trial judge of the Petitioner's oral motions for a

continuance, for a voluntary non-suit and for a recess, when the cases were called for trial at a previously specified time by order (See Tr. 45-47 and Petition at 2).

STATEMENT OF FACTS

The proceedings relevant to the present cases began on July 12, 1977, when the Petitioner filed, pro se, a notice of lis pendens in a case which had been pending in the Court of Common Pleas for Richland County, South Carolina, entitled William H. Moore, Jr. versus Sherbrook Associates, et al, in which the Petitioner had been a named defendant (Tr. 187). Since the Moore suit had been previously dismissed with prejudice and since the notice of lis pendens was hampering the sale of certain real estate, the remaining defendants in that action (Tarr Investments,

Sherbrook Associates, Leroy Strasburger and Alvin Strasburger) moved to strike the notice of lis pendens (Tr. 70-71). Although notice of the hearing was given to the Petitioner, when the motion was heard before the Honorable John Grimball, Circuit Judge, on July 22, 1977, he did not appear (Tr. 70-71). After hearing testimony, Judge Grimball issued an order cancelling the Petitioner's notice of lis pendens in the Moore case (Tr. 132). A notice of intent to appeal the order was filed on July 28, 1977 signed by the Petitioner, pro se (Tr. 188).

Approximately four hours after the filing of Judge Grimball's order in the Moore case, Kermit S. King, Esquire, as attorney for the Petitioner, filed a

notice of lis pendens against property owned by the Respondent, Tarr Investments, and instituted the first action involved in the present Petition (No. 1263) (Tr. 1, 79 and 187). Subsequently, Mr. King withdrew as counsel for the Petitioner (Tr. 39). The Petitioner then filed, pro se, on July 27, 1977 an identical notice of lis pendens to that filed by Mr. King and served and filed an identical summons and complaint, also pro se, which is the second suit involved in the present Petition (No. 1315) (Tr. 1). The defendants (Respondents Tarr Investments, Sherbrook Associates, Leroy Strasburger and Alvin Strasburger) named in the suits moved to strike both notices of lis pendens and the

motion was set to be heard before Judge Grimball (Tr. 1).

A hearing was held before Judge Grimball on July 29, 1977 at which time the Petitioner appeared personally and was also represented (for the purpose of the hearing) by Walter W. Brooks, Esquire, and Frank L. Taylor, Jr., Esquire (Tr. 67). Judge Grimball took testimony offered by the opposing parties (Tr. 115-227).

Following the conclusion of the hearing, Judge Grimball orally rendered findings and conclusions, which were later incorporated in a written order dated August 8, 1977 (Tr. 2,28-32, A. 35-41). In the order, Judge Grimball found, inter alia, that the interests of all parties to the lawsuits would best be served by striking

the notices of lis pendens in both actions and he restrained the Petitioner from filing further notices of lis pendens against the property be sold to the Respondent, United States Trust Company of New York (Tr. 2, 28-32, A. 35-41). Although the Petitioner timely served and filed notice of his intention to appeal from Judge Grimball's order, the appeal was dismissed on January 6, 1978, by a consent order signed by the Petitioner pro se and also by his counsel (Tr. 42-43).

Subsequent to the hearing on July 29, 1977, and prior to the issuance of Judge Grimball's written order of August 8, 1977, the Petitioner brought a Petition for a Writ of Prohibition in the original jurisdiction of the South Carolina Supreme

Court seeking to restrain the enforcement and implementation of Judge Grimball's oral ruling of July 28, 1977 (Tr. 3). On August 3, 1977, Justice J. B. Ness entered a temporary Writ of Prohibition and ordered the Respondents (Tarr Investments, Sherbrook Associates, Leroy Strasburger and Alvin Strasburger) to show cause before Justice W. L. Rhodes, Jr. why the temporary Writ should not be continued (Tr. 3). The Petitioner personally and his counsel and counsel for the Respondents appeared before Justice Rhodes on August 5, 1977, to argue the merits of the Petition (Tr. 3). After having heard extensive argument from all parties, Justice Rhodes dismissed the temporary Writ of Prohibition by Order dated

August 5, 1977 (Tr. 27).

After the hearing before Justice Rhodes, Frank L. Taylor, Jr., Esquire, withdrew as counsel for the Petitioner as evidenced by a consent order issued by the Court (Tr. 41-42). The order, signed by the Petitioner personally, provided that he would thereafter represent himself pro se and that Walter W. Brooks, Esquire, may be associated (Tr. 41-42).

Thereafter, the Respondents, Tarr Investments, Sherbrook Associates, Leroy Strasburger and Alvin Strasburger timely served and filed an answer and counterclaim in both actions then pending (Numbers 1263 and 1315) (Tr. 4,33-37). In each case, the Respondents denied the

allegations of the complaints and set up twelve defenses, one of which was a counterclaim seeking damages for frustration of sale, slander of title and malicious interference with the Respondents' business (Tr. 33-37). The Respondents' answers further asserted the remedy of civil arrest and bail to protect and preserve their interests jeopardized by the actions taken or to be taken by the Petitioner (Tr. 36). The Petitioner pro se served and filed replies to the counterclaims in both actions (Tr. 38-39).

The third case included in the Petition presently before the Court (Number 1424) was commenced by service of a summons without complaint on

August 12, 1977, by the Petitioner pro se against the Respondent, United States Trust Company of New York (Tr. 4, 419). After service of a notice of appearance and demand for service of the complaint by counsel for United States Trust Company of New York, the Petitioner pro se served and filed his complaint on September 16, 1977 (Tr. 4, 419-422). On the same day the complaint was filed, the Petitioner pro se filed a notice of lis pendens describing real property which had been purchased by the Respondent United States Trust Company of New York as trustee from the Respondents Tarr Investments and Sherbrook Associates

(Tr. 421-422). Such filing was a direct violation of the oral and written orders of Judge Grimball (Tr. 2, 28-32,A. 35-41).

Throughout the proceedings in each of the three cases before the Court, the Petitioner was personally served with all pleadings (Tr. 5).

By a special order of Judge Grimball, served upon the Petitioner personally, all three cases included in the present Petition were set for trial before the Honorable Francis B. Nicholson, Circuit Judge, on January 17, 1978 (Tr. 5). At the call of the cases for trial, the Petitioner appeared personally and with counsel, Mr. Brooks (Tr. 5). Mr. Brooks intended to offer as the Petitioner's case, the transcript of testimony taken before Judge

Grimball on July 29, 1977 (Tr. 229). Although Judge Nicholson noted the advance arrangements and the work that had gone into bringing the present actions to trial, he found it necessary to disqualify himself because he realized that he had represented certain of the Respondents before he became a judge (Tr. 230).

By order dated January 31, 1978, Judge Grimball rescheduled the cases for trial on Monday, February 20, 1978 (Tr. 5, 45-46). Since February 20, 1978 was later discovered to be a legal holiday, Judge Grimball again rescheduled the trial for February 21, 1978 and the trial commenced on that date at 2:30 P. M. (Tr. 5, 46-47). At the call of the cases for trial before Judge Cobb,

the Petitioner appeared personally with Mr. Brooks and all Respondents were represented by their respective counsel (Tr. 5-6).

Before any testimony was taken, there was delivered to Judge Cobb a written motion signed only by the Petitioner pro se seeking to have Judge Cobb disqualify himself on the grounds of bias and prejudice (Tr. 6, 245-246, A.41). Judge Cobb then informed Mr. Brooks that the Petitioner could appear and address the Court either pro se or through counsel, but that he would not be permitted to proceed both pro se and through counsel (Tr. 246-247, A. 42). Mr. Brooks then brought to the Court's attention that he had never and did not

then represent the Petitioner in the action against United States Trust, in that the action against United States Trust was brought by the Petitioner exclusively (Tr. 247-248, A. 43). Judge Cobb then ruled that the motion requesting that he disqualify himself would not be considered unless it were signed by counsel (Tr. 248, A. 44). After this ruling, which has not been questioned in the Petition before this Court, and after conferring privately with the Petitioner at counsel table, Mr. Brooks moved to withdraw as counsel for the Petitioner and stated that he would advise the Petitioner from counsel table which he did for most of the trial proceedings on February 21, 1978 (Tr. 6, 248-249, A. 44-45). There being no objec-

tion by the Petitioner, Judge Cobb ordered that Mr. Brooks be granted leave to withdraw as counsel for the Petitioner and the Petitioner has not questioned that order in the appeal below or in his Petition (Tr. 6, 249, A. 45).

The Petitioner then moved that the cases be continued due to the withdrawal of Mr. Brooks as counsel. Counsel for all Respondents objected to a continuance and the motion was denied (Tr. 249-250, A. 21 of Petition).

The Petitioner then tendered to Judge Cobb the motion to disqualify himself, which, after considering the Petitioner's affidavit in support thereof, was denied (Tr. 251). (The Petition incorrectly states

that Judge Cobb refused to consider the motion. Petition at 4).

After the Court consolidated the cases for trial, the Petitioner moved for a voluntary nonsuit (Tr. 262-263, A. 23-24 of Petition). The Respondents objected and asked to move forward and have an affirmative ruling in the cases. (Tr. 263, A. 23 of Petition). The motion was denied (Tr. 263, A. 24 of Petition).

The Petitioner presented as his case the transcript of the proceedings before Judge Grimball on July 29, 1977, after which he rested his case (Tr. 264-266). The transcript was identical to that which Mr. Brooks had intended to offer on January 17, 1978 (Tr. 229). The Respondents moved for a nonsuit with prejudice, which motion was

denied by the Court (Tr. 266-267). The Respondents presented their cases, during most of which the Petitioner was assisted at counsel table by Mr. Brooks (Tr. 6-7). At the close of the presentation of the Respondents' testimony, the Court recessed for the day (Tr. 402).

Court was reconvened on February 22, 1978 and the Petitioner appeared personally with his present counsel, Irvine F. Belser, Jr., Esquire (Tr, 7, 409, A. 25 of Petition). Mr. Belser moved for a continuance of the trial until he could familiarize himself with the case (Tr. 409-412, A. 25-27 of Petition). Judge Cobb informed Mr. Belser that the case was at the reply stage and he denied the motion (Tr. 412, A. 27 of Petition). Mr.

Belser remained in the courtroom (Tr. 412).

The Petitioner again moved for a continuance, stating that he desired to subpoena certain witnesses who were not identified (Tr. 412-413, A. 27-28 of Petition). No subpoenas for witnesses were exhibited; no statement as to absence of any particular witness was made and no effort to present any witness occurred. Noting again that the case was at the reply stage, Judge Cobb denied the motion (Tr. 413, A. 28 of Petition).

At the close of all testimony, the Respondents requested that the Court take judicial notice of the cases of South Carolina Real Estate Commission v. R. Trippett Boineau, 267 S.C. 574, 230 S.E. 2d 440 (1976), cert. denied 431 U.S. 954

(1977), (wherein Petitioner's broker's license was revoked for false and fraudulent transactions) [1] and In the Matter of R. Trippett Boineau, 269 S.C. 189, 236 S.E. 2d 821 (1977) (wherein the resignation of the Petitioner as a member of the South Carolina Bar was accepted) (Tr. 416).

Judge Cobb then took the case under advisement. Judge Cobb issued his written order in all three cases on March 3, 1978 (Tr. 54-62, A. 14-20 of Petition).

The Petitioner has never indicated that he ceased to represent himself pro se in the matters before the Court (Tr.

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1 It may be of interest to note that the defense of the Petitioner was that he acted "on his own behalf" and not as a real estate broker.

9). The Petitioner has consistently appeared pro se throughout the proceedings in action numbers 1315 and 1424 (Tr. 9). Until his employment of present counsel after the trial of the cases, the Petitioner had no attorney other than himself in action numbers 1315 and 1424.

ARGUMENT

DID THE DENIAL OF THE PETITIONER'S MOTIONS BY THE TRIAL COURT FOR A CONTINUANCE, FOR A VOLUNTARY NONSUIT AND FOR A TEMPORARY RECESS CONSTITUTE A DENIAL OF DUE PROCESS OF LAW AND/OR EQUAL PROTECTION OF THE LAWS PROVIDED FOR IN THE CONSTITUTION OF THE UNITED STATES?

The primary issue (identical in #1263 and #1315 and incorporated in #1424) is whether a constructive trust should be impressed upon partnership property. The petitioner had been a partner in the real estate venture,

but became delinquent in his capital contributions and other obligations and conveyed all of his interest in the partnership. His option to re-acquire an interest was not exercised even though extended. He made no contributions thereafter and instituted suit some six years after he had transferred his partnership interest. No tender was ever made by petitioner. [2]

The Petition before the Court does not mention the fact that throughout the proceedings in the present cases, the Petitioner has consistently appeared

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2 The petitioner paid no part of the mortgages, expenses, interest, real property taxes, or development costs, which were indeed large (Tr. 336-345).

pro se and filed pleadings and papers pro se. Important in this regard is the fact that in two of the three cases, 1424 and 1315 (identical to the third case, 1263), there was no withdrawal of counsel. With regard to action number 1424, counsel appearing on behalf of the Petitioner at the call of the cases for trial, Walter W. Brooks, Esquire, stated prior to his withdrawal, "I did not have anything to do with U. S. Trust, now. That was brought by him [the Petitioner] exclusively." (Tr. 248, A. 43).

Various courts have dealt with the situation which arises when an individual appears on his own behalf in civil litigation. See, e.g., Sandlin v.

Pharoah, 182 Okl. 442, 78 P. 2d 284 (1938), Ackerman v. Southern Arizona Bank & Trust Co., 39 Ariz. 484, 7 P. 2d 944 (1932). The Petitioner in the present cases claims that surprise, unexpected events and/or inability to proceed with the actual trial of the cases dictated a continuance or recess of the trial. The Respondents submit, however, that since the Petitioner appeared as his own attorney throughout all proceedings in at least two of his three actions, he should be bound by all rules of court and enjoy rights no greater than those of any other litigant. Barnes v. United States, 241 F. 2d 252 (9th Cir. 1956). Murphy v. Citizens Bank of Clovis, 244 F. 2d 511

(10th Cir. 1957).

In the Petition, the Petitioner argues that he was forced to proceed to trial "without the aid of trial counsel." (Petition at 10). As one Court has pointed out, after a litigant elected to proceed to trial pro se:

> she could not expect or seek concessions because of her inexperience and lack of trial knowledge and training, since the court was bound to apply the rules of courtroom procedure equally binding on members and non-members of the bar. Mazique v. Mazique, 356 F. 2d 801 (D.C. Cir. 1966).

It is submitted that the consistent appearance pro se coupled with the fact that the Petitioner has a law degree supports the discretion which the trial

judge exercised in the present cases.

There is substantial authority which supports the proposition that, even in the absence of an appearance pro se by a litigant, the withdrawal of counsel in a civil action at the call of a case for trial does not require the granting of a motion for a continuance. See Annot., 48 A.L.R. 2d 1155 (1956). Furthermore, this rule of law has been held to satisfy the requirements of the United States Constitution. Ungar v. Sarafite, 376 U.S. 575 (1964), see also Avery v. Alabama, 308 U.S. 444 (1940).

The Ungar case involved a contempt proceeding wherein counsel for the accused party withdrew from representation of the accused after the trial court denied his motion for a continuance of the hearing. The appellant

in Ungar received prior notice of the hearing date, as did the Petitioner in the present cases. (Tr. 45-47). The denial in Ungar of the motion for adjournment was based upon the trial court's belief that the moving party had sufficient notice to employ counsel who would be available to proceed with the matter at the scheduled hearing. In the present cases, the order setting the time for the trial was issued approximately three weeks in advance of the hearing. (The order setting the trial for February 20, 1978 was signed January 31, 1978 and the order setting the trial for February 21, 1978 was signed February 10, 1978. Tr. 46-47). Of course this followed an earlier set time before Judge Nicholson.

In upholding the trial court's denial of the appellant's motion for a continuance, this Court noted that it was arguable that some judges may have granted a continuance under the circumstances. The Court further stated:

> [T]he fact that something is arguable does not make it unconstitutional. Given the deference necessarily due a state trial judge in regard to the denial or granting of continuances, we cannot say these denials denied [appellant] due process of law. Ungar v. Sarafite, 376 U.S. 575, 591 (1964).

In defining the standard used to determine the constitutional considerations in cases such as Ungar, the Court therein stated:

> The matter of a continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel...There are no

> mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied. Ungar v. Sarafite, 376 U.S. 575, 589 (1964).

The attempt by the Petitioner to characterize the denial by the trial court of his motions for continuance and for a recess as a denial of constitutional guarantees of due process and equal protection completely ignores the complex history of the proceedings in the present cases. The trial judge knew the history. The record reveals two hearings before a Justice of the Supreme Court of South Carolina, not including the continuance before Judge Nicholson and the trial

before Judge Cobb on February 21 and 22, 1978 (Tr. 1, 3, 5, 348). The trial of the cases was set, special order, on three occasions (Tr. 5). Present counsel for the Petitioner is the fourth attorney to have appeared of record in the cases in addition to the Petitioner's uninterrupted appearances pro se (Tr. 1, 2, 8, 9). None of those four attorneys are from the same office. The Respondents submit that, applying the standards enunciated in Ungar, the Petitioner's constitutional rights to due process and equal protection of the laws were not violated by the trial court's denial of Petitioner's motions for a continuance and for a recess at the call of the cases for trial.

The same considerations relevant to

the denial of Petitioner's motions for a continuance and for a recess are applicable to his motion for voluntary nonsuit. The motion sought further delay, which in fact deprived Respondents of property rights. It is evident from a reading of South Carolina Circuit Court Rule 45 (A. 34-35 of Petition) and a reading of the record that the Petitioner was not entitled to a nonsuit as a matter of right at the time he requested it. Again, this denial was addressed to the sound discretion of the trial judge.

Many decisions of the South Carolina Supreme Court set forth the guidelines to be followed when questions regarding continuances and other procedural matters are addressed to (the discretion of) a trial

judge. See Harmon v. Harmon, 257 S.C. 154, 184 S.E. 2d 553 (1971), Timmons v. South Carolina Tricentennial Com'n., 254 S.C. 378, 175 S.E. 2d 805 (1970), cert. denied 400 U.S. 986 (1971), Romanus v. Biggs, 217 S.C. 77, 59 S.E. 2d 645 (1950), Barr v. Witsell, 173 S.C. 199, 175 S.E. 436 (1934), Armitage v. Seaboard Airline Ry. Co., 166 S.C. 21, 164 S.E. 169 (1932), Brunson v. Hamilton Ridge Lumber Corp., 122 S.C. 436, 115 S.E. 624 (1923), Pee Dee River Lumber Co. v. Fountain, 90 S.C. 122, 72 S.E. 885 (1911), Edens v. Epps, 87 S.C. 367, 69 S.E. 669 (1910), Inman v. Hodges, 80 S.C. 455, 61 S.E. 958 (1908). The Federal Courts have also spoken in terms of exercising sound judicial dis-

cretion. See, e.g., Krodel v. Houghtaling, 468 F. 2d 887 (4th Cir. 1972), cert. denied, 414 U.S. 829 (1973).

This Court exercises discretion. Judicial discretion is a standard "... the exercise of which will ordinarily not be reviewed." Avery v. Alabama, 308 U.S. 444, 446 (1940). The Petitioner in the present cases requests that discretion be defined in constitutional terms of due process of law and equal protection of the laws. Such a definition is not warranted by the facts of the cases before the Court.

CONCLUSION

The Petitioner chose not to be represented by counsel in the cases before the

Court, ab initio, These cases are not a basis for any type of relief or precedent. For all of the above reasons your Respondents respectfully pray that this Honorable Court issue an Order denying the Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX

ORDER OF THE HONORABLE JOHN GRIMBALL, CIRCUIT JUDGE

This matter comes before me on motion of counsel for the defendants to strike the lis pendens filed by the plaintiff in the above entitled action on July 22, 1977. This court issued its order on July 22, 1977 in the case of William H. Moore, Jr., Plaintiff, vs. Sherbrook Associates, et al, Defendants, directing the Clerk of Court of Richland County to strike any lis pendens heretofore or hereafter filed against the properties of Leroy Strasburter and/or Alvin Strasburger and/or Tarr Investments and/or Sherbrook Associates by R. Trippett Boineau. Testimony was taken before me during the hearing on July 22, 1977 after due and personal service upon R. Trippett Boineau of the notice of motion and order setting forth the time, date and place of hearing. There was no appearance made by or on behalf of R. Trippett Boineau at the July 22, 1977 hearing. It appears that since the signing of the order of July 22, 1977, R. Trippett Boineau pro se and by counsel has filed two (2) additional lis pendens against the same properties, one being filed in the afternoon of July 22, 1977 and one being filed on July 27, 1977.

Accompanying the lis pendens filed on July 22, 1977 by R. Trippett Boineau, pro se, was accompanied by [sic] a summons and complaint identical to that served by Kermit S. King, Esquire.

At the time of the hearing on the present motion before the court on July 29, 1977, Mr. King withdrew as counsel for the plaintiff and asked that the lis pendens previously filed by him be stricken and the summons and complaint in this action be dismissed. Appearing at the hearing on July 29, 1977 as counsel for and on behalf of R. Trippett Boineau were Frank L. Taylor, Jr., Esquire, and Walter S. Brooks, Esquire. Mr. Boineau also appeared in person. R. Trippett Boineau was adequately represented by counsel at the hearing on the motion now before the court. Mr. King's request that the case be dismissed is denied and this court substitutes Mr. Taylor and Mr. Brooks as counsel for the plaintiff in this action. It further appears that the summons and complaint signed by R. Trippett Boineau, pro se, is identical to the suit served and filed by Mr. King. The pleadings served and filed by Mr. King shall constitute the pleadings before me and Mr. Taylor and Mr. Brooks shall constitute the counsel for Mr. Boineau in that suit.

This court has carefully considered the testimony offered on behalf of the

parties to this suit and it appears that valuable tracts of real estate are involved and the encumbrances upon such tracts are large. It further appears from the testimony that a portion of this property is to be sold to United States Trust Company of New York as Trustee to prevent the foreclosure of various mortgages held on the entire tract of land listed in the lis pendens filed by the Plaintiff. This court finds that the filing of a lis pendens against the property subject to the above mentioned sale will chill and frustrate said sale and will ultimately result in irreparable loss to the defendants herein and to any claim, if any, the plaintiff may have in partnership assets. This court further finds that it is to the benefit of the plaintiff and the defendants if the abovementioned sale is consummated and the funds derived therefrom disbursed immediately.

Three (3) foreclosure actions against properties held by the defendants and presently pending before this court will be dismissed if the sale of an unencumbered portion of the properties which are the subject of the lis pendens filed by the plaintiff is completed.

The order of this court of July 22, 1977 was filed at 12:04 P. M. on that

date and on July 22, 1977 at 12:07 P. M. Tarr Investments and Sherbrook Associates deeded some real properties to United States Trust Company of New York as Trustee, which is recorded in the office of the Registor [sic] of Mesne Conveyances for Richland County in Deed Book D-430 at page 381. I find and hold that said conveyance of record in the office of the Register of Mesne Conveyances of Richland County in Deed Book D-430 at page 381 was free and clear of any claim of this plaintiff R. Trippett Boineau and not subject to any lis pendens filed by or for R. Trippett Boineau. Furthermore, I find that R. Trippett Boineau himself cancelled the lis pendens against the subject properties and as of 12:07 P. M. on July 22, 1977 there was no lis pendens filed against any of the properties described in the deed to United States Trust Company of New York as Trustee.

Reference is herewith made to the order of this court of July 22, 1977 and the testimony then taken and the testimony taken on July 29, 1977, I find that the equity powers of the court under the evidence presented permits the dismissal of the lis pendens filed by the plaintiff against the portion of the properties therein listed which are the subject of the sale to the United States Trust Company of New York, as Trustee, said properties being itemized, set forth and

described more fully in the Exhibit marked "A" attached hereto, and herewith incorporated for the purpose of identifying the real properties in question. Accordingly,

IT IS ORDERED that R. Trippett Boineau be and he hereby is restrained from filing or procuring or authorizing or directing any further or additional filing of any lis pendens in this action or any other action as it pertains to the real properties of Tarr Investments and/or Sherbrook Associates and/or Leroy Strasburger and/or Alvin Strasburger itemized, set forth and described in the Exhibit marked "A" attached hereto and herewith incorporated by reference for the purpose of identifying the real properties in question, or employing any person to file such a lis pendens pending the further order of this court and pending the filing of a good and sufficient bond conditioned upon the payment of any and all losses and damages, including attorney fees, sustained by these defendants as a result of such filing, the amount of which bond shall hereafter be set by this court upon application of any party. And

IT IS FURTHER ORDERED that the lis pendens filed for the plaintiff in the above captioned case on July 22, 1977 and the lis pendens filed by the plaintiff

in the above captioned case on July 27, 1977 and any other lis pendens filed by or for the plaintiff against the properties itemized, set forth and described in the Exhibit marked "A" and attached hereto and herewith incorporated by reference for the purpose of identifying the real properties in question, are hereby cancelled and stricken and the Clerk of this Court is hereby directed to strike the same of record and to strike any other lis pendens, if any there be, now filed or hereafter filed by or for this plaintiff against the properties described in the attached Exhibit "A", which is herewith incorporated for the purpose of identifying the properties in question.

IT IS FURTHER ORDERED that the defendant deposit from the proceeds of the sale to United States Trust Company of New York as Trustee the sum of Fifty Thousand ($50,000.00) Dollars in escrow with a building and loan association, savings and loan, institution or bank in the form of cash, stocks or bonds in the name of the defendants. Any interest which accrues on the escrow until the conclusion of the present suit and such principal and interest shall remain the property of the defendants until further order of this court.

AND IT IS SO ORDERED.

/S/ John Grimball
Resident Judge, Fifth
Judicial Circuit

Columbia, South Carolina

August 8th, 1977

EXCERPT FROM TRANSCRIPT OF RECORD

Transcript 245-249

Mr. Brooks: ... The last thing I want to bring before the court is that Mr. Boineau has signed this pro se, and I have given it to counsel, a motion asking you to disqualify yourself. That is also based on an order you formerly issued on the matter of Hare versus--I think it is a 500 Gervais Street partnership, which Mr. Boineau was also a party in.

THE COURT: Are you appearing as attorney for Mr. Boineau in all these cases?

MR. BROOKS: I am at this time, yes, but he is--one of them he appears pro se. Your Honor, as McCuchen [sic] mentioned, there has been a joinder there of two--by Moore versus Tarr Investments,

one of them he brought pro se, one Kermit King brought in his behalf, and later withdrew. I think he and Frank Taylor brought it together. They later withdrew.

I later became involved. That is two of them. The other one Mr. Boineau brought himself.

THE COURT: That is really what I was asking. The one Mr. Boineau brought himself or represents himself, are you representing him now in that matter or is he still representing himself?

MR.BROOKS: Your Honor, I think it would be safe to say that Mr. Boineau represents himself in both of these matters and at this juncture I represent him in both of these matters also.

THE COURT; You can't have it both ways. Mr. Boineau will either have to appear representing himself or with you as attorney.

MR. BROOKS: Well, your Honor, I don't have anything to question the court's ruling on that. I don't think I agree with you because I have seen it happen too many times, especially in General Sessions Court, where someone appears pro se and the court appoints

somebody, someone to represent them and protect their interests, and the matter goes on--

THE COURT: You can't do it in General Sessions Court.

MR. BROOKS: I wish I could give the authority on that because I have something--

THE COURT; A case came down about a month or two ago. You can have counsel sitting at the table to advise a defendant in the case, but he cannot speak to the court. I just want to know who is speaking for whom.

MR. BROOKS: At this juncture I am speaking for Mr. Boineau. He signed that motion pro se, and I guess for the sake of clarity and moving forward I will have to argue it for him, seeing that I am here. I couldn't now say I am going to leave and be fair to the court or to opposing counsel.

THE COURT; All right, sir. Then I am going to put in the record that you are appearing as his attorney in all three cases.

MR. BROOKS: Yes, sir, at this juncture--no, Your Honor. I did not have anything to do with US Trust, now. That was brought by him exclusively.

THE COURT: Then all cases except US Trust.

MR. BROOKS: Yes, sir, and Boineau versus Tarr-of course Mr. Boineau will have to speak for himself, but I have already spoke this morning that he does not agree to a joinder of that particular lawsuit or these two lawsuits.

THE COURT: Well, in this motion that you hand up to me, signed by Mr. Boineau, pertains to the two cases wherein you are his attorney?

MR. BROOKS: Up until this moment when you declared he couldn't have it both ways, I was of the opinion that he could. So, it is being handed up in his position as representing himself, as well as me representing-- As Your Honor is well aware, up until a short time ago Mr. Boineau was a member of the Bar and could have stood here as cocounsel, if he wanted to, and this is what has caused some dilemma here.

THE COURT: Well, for me to consider this motion, you will have to sign it.

MR. BROOKS: Your Honor, I will have to withdraw as counsel.

THE COURT: All right. You make a motion at this time to be relieved as counsel?

MR. BROOKS: Yes, sir.

THE COURT: Sir?

MR. BROOKS: From everything--I am going to have to advise him from behind the seat, but I am not going to be counsel any more.

Your Honor, I am making a motion in open court to be relieved as counsel. I think that Mr. Boineau will have to move forward himself. I will have to sit here and advise him, but I would not address the court any more.

THE COURT: I will grant the motion. It is so ordered.

In compliance with Paragraph 1 of Rule 33 of the Rules of the Supreme Court of the United States, I hereby certify that I have served the required copies of the Brief of Respondents in Opposition to Petition for Writ of Certiorari on Irvine F. Belser, Jr., Esquire, Attorney for the Petitioner, by depositing the same in the United States Post Office on the 3rd day of October, 1979, with first class postage prepaid, addressed to said Attorney for Petitioner at Post Office Drawer 12014, Columbia, S. C. 29211.

Thomas E. McCutchen

Thomas E. McCutchen